



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180320301-8301-01]

RIN 0648-XG121

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement annual management measures and catch limits for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2018, through June 30, 2019. The proposed action would prohibit directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California, except in the live bait, tribal, or minor directed fisheries, or as incidental catch in other fisheries. The incidental harvest of Pacific sardine would initially be limited to 40-percent by weight of all fish per trip when caught with other CPS or up to 2 metric tons (mt) when caught with non-CPS. The proposed annual catch limit (ACL) for the 2018-2019 Pacific sardine fishing year is 7,000 mt. This proposed rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Comments must be received by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0044, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2018-0044, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802-4250; Attn: Joshua Lindsay.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the report “Assessment of Pacific Sardine Resource in 2018 for U.S.A. Management in 2017-2018” are available <http://www.pcouncil.org/wp->

content/uploads/2017/03/G5a_Stock_Assessment_Rpt_Full_ElectricOnly_Apr2017BB.pdf

f, and may be obtained from the West Coast Region (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034, *joshua.lindsay@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

During public meetings each year, the Southwest Fishery Science Center (SWFSC) presents the estimated biomass for Pacific sardine to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC). The Team, Subpanel and SSC review the biomass and the status of the fishery, and make applicable catch limit and additional management measure recommendations. Following Council review and public comment, the Council adopts a biomass estimate and makes its catch limit and any in-season accountability measure recommendations to NMFS. Annual specifications published in the **Federal Register** establish these catch

limits and management measures for each Pacific sardine fishing year. This rule proposes the Council's recommended catch limits for the 2018-2019 fishing year, as well as management measures to ensure that harvest does not exceed those limits, and adoption of an OFL and ABC that is established after taking into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine.

According to the FMP, the quota for the principal commercial fishery is determined using the FMP-specified HG formula. The HG formula in the CPS FMP is $HG = [(Biomass - CUTOFF) * FRACTION * DISTRIBUTION]$ with the parameters described as follows:

1. *Biomass*. The estimated stock biomass of Pacific sardine age one and above. For the 2018-2019 management season, this is 52,065 mt.
2. *CUTOFF*. This is the biomass level below which no HG is set. The FMP established this level at 150,000 mt.
3. *DISTRIBUTION*. The average portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent.
4. *FRACTION*. The temperature-varying harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

As described above, the Pacific sardine HG control rule, the primary mechanism for setting the annual directed commercial fishery quota, includes a CUTOFF parameter, which has been set as a biomass level of 150,000 mt. This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Since this year's biomass estimate is below that value, the formula results in an HG of zero, and

no Pacific sardine are available for the primary commercial directed fishery during the 2018-2019 fishing season.

At the April 2018 Council meeting, the Council's SSC approved, and the Council adopted, the SWFSC's "Assessment of the Pacific Sardine Resource in 2018 for U.S. Management in 2018-2019", available here: [http://www.pcouncil.org/wp-](http://www.pcouncil.org/wp-content/uploads/2017/03/G5a_Stock_Assessment_Rpt_Full_ElectricOnly_Apr2017BB.pdf)

[content/uploads/2017/03/G5a_Stock_Assessment_Rpt_Full_ElectricOnly_Apr2017BB.pdf](http://www.pcouncil.org/wp-content/uploads/2017/03/G5a_Stock_Assessment_Rpt_Full_ElectricOnly_Apr2017BB.pdf)

f. The resulting Pacific sardine biomass estimate of 52,065 mt was adopted as the best available science for setting harvest specifications. Based on recommendations from its SSC and other advisory bodies, the Council recommended, and NMFS is proposing, an OFL of 11,324 mt, an ABC of 9,436 mt, and a prohibition on Pacific sardine catch, unless it is harvested as part of the live bait, tribal, or minor directed fisheries, or as incidental catch in other fisheries. As an additional management measure, the Council also recommended, and NMFS is proposing, an ACL of 7,000 mt.

Because Pacific sardine is known to school with other CPS stocks, the Council recommended, and NMFS is proposing, incidental catch limits to allow for the continued prosecution of these other important CPS fisheries. Furthermore, the Council recommended, and NMFS is proposing, the following automatic inseason actions to reduce the potential for both targeting and discard of Pacific sardine in these fisheries:

- An incidental per landing by weight allowance of 40 percent Pacific sardine in non-treaty CPS fisheries until a total of 2,500 mt of Pacific sardine has been landed; and

- A reduction of the incidental per landing allowance to 20 percent for the remainder of the 2018-2019 fishing year once 2,500 mt Pacific sardine has been landed.

Additionally, the Council recommended, and NMFS is proposing, a 2-mt incidental per landing allowance in non-CPS fisheries.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** to announce when catch reaches the incidental limits as well as any changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS would make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

In each of the previous six fishing years, the Quinault Indian Nation requested, and NMFS approved, a set-aside for the exclusive right to harvest Pacific sardine in the Quinault Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to the 1856 Treaty of Olympia (Treaty with the Quinault). For the 2018-2019 fishing year, the Quinault Indian Nation has requested, and NMFS is proposing, a tribal set-aside of 800 mt. This is the same amount that was requested and approved for the 2017-2018 season.

At the April 2018 meeting, the Council also voted in support of two exempted fishing permit (EFP) proposals requesting an exemption from the prohibition to directly harvest Pacific sardine. This action accounts for the potential of NMFS approval of up to 610 mt of the ACL to be harvested for EFP activities.

Detailed information on the fishery and the stock assessment are found in the report “Assessment of the Pacific Sardine Resource in 2018 for U.S. Management in 2018-2019” (see **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its

affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The purpose of this proposed rule is to conserve the Pacific sardine stock by preventing overfishing, so that directed fishing may occur in future years. This will be accomplished by implementing the 2018-2019 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. The small entities that would be affected by the proposed action are the vessels that would be expected to harvest Pacific sardine as part of the West Coast CPS small purse seine fleet if the fishery were open. In 2014, the last year that a directed fishery for Pacific sardine was allowed, there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 58 vessels in the Federal CPS limited entry fishery off California (south of 39° N. lat.); and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The average annual per vessel revenue in 2014 for those vessels was well below the threshold level of \$11 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner. Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

The CPS FMP and its implementing regulations require NMFS to annually set an OFL, ABC, ACL, and HG or annual catch target (ACT) for the Pacific sardine fishery based on the specified harvest control rules in the FMP applied to the current stock biomass estimate for that year. The derived annual HG is the level typically used to manage the principal commercial sardine fishery and is the harvest level NMFS typically

uses for profitability analysis each year. As stated above, the CPS FMP dictates that when the estimated biomass drops below a certain level (150,000 mt) there is no HG. Therefore, for the purposes of profitability analysis, this action is essentially proposing an HG of zero for the 2018-2019 Pacific sardine fishing season (July 1, 2018, through June 30, 2019). The estimated biomass used for management during the preceding fishing year (2017-2018) was also below 150,000 mt. Therefore, NMFS did not implement a HG for the 2017-2018 fishing year, thereby prohibiting the primary commercial directed Pacific sardine fishery. Since there is again no directed fishing for the 2018-2019 fishing year, this proposed rule will not change the potential profitability as compared to the previous fishing year.

The revenue derived from harvesting Pacific sardine is typically only one of the sources of fishing revenue for the commercial vessels that participate in this fishery. As a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular, squid, making Pacific sardine only one component of a multi-species CPS fishery. Additionally, some sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during times of the year when sardine are not available. The purpose of the incidental catch limits proposed in this action are to ensure the vessels impacted by a prohibition on directly harvesting sardine can still access these other profitable fisheries while still minimizing Pacific sardine harvest. These proposed

incidental allowances are similar to those implemented last year and should not restrict access to those other fisheries.

CPS vessels typically rely on multiple species for profitability because abundance of Pacific sardine, like the other CPS stocks, is highly associated with ocean conditions and seasonality. Variability in ocean conditions and season results in variability in the timing and location of CPS harvest throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time. Therefore, as abundance levels and markets fluctuate, the CPS fishery as a whole has relied on a group of species for its annual revenues.

Therefore the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 21, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2018-11208 Filed: 5/24/2018 8:45 am; Publication Date: 5/25/2018]